

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

UNITED STATES DISTRICT COURT

DEC 03 2021

for the

Northern District of Georgia

By:  KEVIN P. WEIMER, Clerk
Deputy Clerk

Atlanta Division

Case No.

1:21-CV-4951

(to be filled in by the Clerk's Office)

Jury Trial: (check one) ☒ Yes ☐ NoTIMOTHY CLARK
MELISSA CLARK

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-
THE CITY OF ATLANTA
Officer: CLARENCE TOSH
Officer: GREGORY DUBOSE

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address

MELISSA CLARK / TIMOTHY CLARK
2900 CAMPCREEK PKWY. B-22
ATLANTA FULTON
GEORGIA 30337
(404) 437-3884
sept561961@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

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Defendant No. 1

Name

Job or Title (if known)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (if known)

Sgt. CLARENCE TOSH
ATLANTA Police DEPARTMENT
A11
ATLANTA FULTON
GEORGIA 30303

Defendant No. 2

Name

Job or Title (if known)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (if known)

OFFICER GREGORY DuBOSE
ATLANTA Police DEPARTMENT
ATLANTA FULTON
GEORGIA 30303

Defendant No. 3

Name

Job or Title (if known)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (if known)

THE CITY OF ATLANTA
Police DEPARTMENT
ATLANTA FULTON
GEORGIA 30303

Defendant No. 4

Name

Job or Title (if known)

Street Address

City and County

State and Zip Code

Telephone Number

E-mail Address (if known)

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*



Federal question



Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

THIS CASE WAS NEVER INVESTIGATED PROPERLY
THE G.B.I. NEVER INVESTIGATED THIS CASE.

B. If the Basis for Jurisdiction Is Diversity of Citizenship**1. The Plaintiff(s)****a. If the plaintiff is an individual**

The plaintiff, (name) MELISSA CLARK, is a citizen of the
State of (name) GEORGIA.

b. If the plaintiff is a corporation

The plaintiff, (name) _____, is incorporated
under the laws of the State of (name) _____,
and has its principal place of business in the State of (name) _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)**a. If the defendant is an individual**

The defendant, (name) SGT. CLARENCE TOSH, is a citizen of
the State of (name) GEORGIA. Or is a citizen of
(foreign nation) _____.

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- b. If the defendant is a corporation
 The defendant, (name) OFFICER GREGORY DUBOSE, is incorporated under the laws of the State of (name) GEORGIA, and has its principal place of business in the State of (name) GEORGIA.
 Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) THE ATLANTA POLICE DEPARTMENT.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (explain):

SON MONTELLIS CLARK WAS RACIALLY PROFILED MY AND MURDERED WITH EXCESSIVE FORCE OF 39 SHOTS TO HIS BODY.

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

I MELISSA CLARK AND MY TWO SONS MONTELLIS CLARK IS DECEASED WITH 39 SHOTS TO HIS BODY. TIMOTHY CLARK WAS STRUCK BY ONE OF THE OFFICERS BULLETS ENTERED HIS BACK. I AM THE MOTHER OF JULY 15TH 2008 OUR CIVIL AND CONSTITUTIONAL RIGHTS WERE VIOLATED

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

MONTELLIS CLARK
FOR THE LOSS OF MY FIRST BORN SON I MELISSA CLARK WITNESS HIM BEING SHOT 39 TIMES UNARMED, I MELISSA CLARK WAS HANDCUFFED AND SHOVED IN THE BACK OF A PATROL CAR ALSO MY SON TIMOTHY CLARK IS STILL HAVING PAIN IN HIS BACK AND LEGS. MONTELLIS WAS BEING TREATED FOR MENTAL HEALTH ISSUES AT GRANT HOSPITAL. NOW I MELISSA HAS PTSD.

95,000 ANNUALLY FOR MELISSA CLARK
 75,000 ANNUALLY FOR TIMOTHY CLARK

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 12-3-2021

Signature of Plaintiff Melissa Clark
 Printed Name of Plaintiff MELISSA CLARK

B. For Attorneys

Date of signing: _____

Signature of Attorney _____
 Printed Name of Attorney _____
 Bar Number _____
 Name of Law Firm _____
 Street Address _____
 State and Zip Code _____
 Telephone Number _____
 E-mail Address _____

To whom it may concern,

I am Melissa Clark. I am writing to tell you the events related to the death of my 28 year old son, Montellis Clark, in 2008. In April of 2008, my first born son, Montellis, and I began helping renovate a section 8 house located 976 Cascade Ave. Our work was being done under the direction of the contractor, Simmy Willis, and his son, Chad Willis. During this period we were residing at the residence, working on the house in the mornings and throughout the day, and staying overnight on the property. The owner's name was Jerry MacPherson. He was very much aware of the four of us getting the house ready to be rented. Also, my son, Timothy, would come by checking to see how we were coming along with the house.

On July, 15 2008 the house was completed and ready to be inspected. The five of us were on the outside of the house, Simmy and Chad were in the backyard and my two sons and I were sitting on the wall of the driveway. We were waiting on the section 8 inspector who was on her way. All of a sudden, a black vehicle drove across four lanes of Cascade and pulled up in the driveway of 976 Cascade Ave. Two males jumped out with guns already drawn. We stood up. The two men pointed their guns at my son, Montellis, walked up to him in close range as if they came to pick a fight, rob or kill. The white male yelled to my son, "Take your hand out of your pocket!" Shots were fired. I witnessed my Montellis being shot to the ground. Timothy and I jumped on the ground. I screamed and screamed and yelled for help. I cried and cried. The white male stepped back, reloaded his gun and stood over my son and fired multiple shots as he lay unarmed on the ground in the driveway. I started to hear sirens, police officers were on the scene. Timothy and I were handcuffed, lying face down on the ground and told not to talk. Timothy looked at me and said, "Mama, I've been shot too!" I yelled for help, "Can I please get an ambulance, my son's been shot?" We were threatened by the officers to "Shut the f**** up!!" Simmy and Chad Willis were put on the ground also. After being on the ground and in handcuffs for 30 minutes, Simmy, Chad and myself were placed in the back of a patrol car. We were taken to the homicide unit for questioning. Montellis was still on the ground and no ambulance on the scene for Timothy. Timothy was treated at Grady Hospital for a gunshot wound to the lower back. The bullet that struck Timothy came from one of the perpetrators gun.

Later in the same day, we found out that these two men were police officers. We did not know this at the time when we were approached by them with their guns already drawn. They never verbally identified themselves. They were in plain clothing and driving an unmarked vehicle. They didn't ask us for identification or why we were on the property. There was no 911 call to the residence, no one was out of order, no one was arrested, and no one charged. When I read the newspaper the next day, my son Montellis received 39 gunshot wounds to his body. He was overkilled with excessive force. He was racially profiled and suffered a violent death. He was murdered in cold blood while his mother and his brother watched.

This dangerous event never should have happened. My family's civil and constitutional rights were violated. It has caused me to be traumatized and diagnosed with Major Depression and Post Traumatic Stress Disorder. I have been in recovery at Grady's Psychosocial Rehabilitation Program for 20 months, still trying to recover. I need some answers. This story has never been accurately heard. We never went

to court. I feel that we were treated unfairly in the 11th Circuit Court of Appeals. It needs to be understood that my son was racially profiled and provoked in a violent way. I need some closure and justice to move forward in my life, to get through this. I am asking, begging and pleading that even now, may we please have an independent, fair and thorough investigation?

Would you please give me a response or a reply? I want these officers to be held accountable for their actions. They should be disciplined and punished. These officers were supposed to protect and serve us as citizens. What probable cause did these officers have to approach us in such a way? We were working on this house for 3 months. I believe these officer's should be given further review to ensure they have not violated others civil rights or the law in any other way. Police officers who are corrupt need improved training and require a higher review of behavior on the force and off duty. Police officers in every department, in each county, need more training with citizens with mental health issues so they learn how to approach them in a way that does not provoke or trigger this type of response. This kind of trauma to a family from an Atlanta police officer to violate a citizen's civil rights should be zero tolerance.

Below are signatures from civil rights activists and supporters who agree that this situation needs further review and would like to see justice for my son, Montellis Clark.

THE UNITED STATES DISTRICT COURT

TIMOTHY CLARK PLAINTIFFS
MELISSA CLARK

DEC. 3RD 2021

THE CITY OF ATLANTA DEFENDANTS

CASE NUMBER 0810455PS

CASE NUMBER 12-14392

CASE NUMBER 1:10-CV-02163-MHS

I MELISSA CLARK FEEL THIS
CASE WAS NOT INVESTIGATED PROPERLY.

THERE WAS NO BODY CAMERAS

THE G.B.I. NEVER INVESTIGATED
THIS CASE

I MELISSA CLARK SHOULD BE
COMPENSATED FROM THE CITY OF ATLANTA
FOR THE DEATH OF MY SON MONTELLIS CLARK
AND FOR EMOTIONAL DISTRESS.

(404) 437-3884 2900 Camp Creek
PKWY B-22
ATL. GA. 30337

Petition to Reconsider Case

Petition summary and background	On July 15, 2008, my son Montellis Clark was murdered with excessive force by the Atlanta Police Department after they drove up in an unmarked vehicle, in plain clothes, guns drawn, not announcing they were police officers while we were sitting on the wall of the driveway of 976 Cascade Ave. There has never been a fair, independent and thorough investigation into this incident of excessive force and racial profiling that occurred on this day.
Action petitioned for	We, the undersigned, are concerned citizens who urge our leaders to act now to review this case so that these officers will be held accountable for the excessive force they used when they shot Montellis 39 times.

Printed Name	Signature	Address	Date
MELISSA CLARK	Melissa Clark	2900 CAMP CREEK PKWY COLLEGE PARK GA. 30337	12/3/2021
Jennifer Wooten	Jennifer Wooten	10 Park Place ATL GA 30303	2/6/15
Ann Pierre	Ann Pierre	10 PARK PLACE ATLANTA, GA 30303	2/20/15
Deborah Wells	Deborah Wells	2676 Loughaven Dr Atlanta, GA 30318	4/17/15
Igloria Zashel	Igloria Zashel	1289 Campbellton Rd. S.W. 30310	4/27/15
Keith Wood, III	Keith Wood, III	10 Park Place ATL GA 30303	4/30/2015
TERENCE SMITH SR.	Terence Smith Sr.	426-CHARTER OAK DR. ATLANTA, GA. 30331	5/22/2015
Raissa Hornsby	Raissa Hornsby	3016 Sandtown Rd. S.W. Atlanta, GA. 30311	6/10/2015

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Ann Pierre	Ann Pierre	10 PARK PLACE ATLANTA, GA 30303	2/20/15
Deborah Wells	Deborah Wells	3676 Loghaven Dr Atlanta, GA 30318	4/17/15
Isolina Zashul	Isolina Zashul	1289 Campbellton Rd S.W. 30310	4/27/15
Keith Wood, III	Keith Wood, III	10 Park Place ATL GA 30303	4/30/2015
TERRENCE SMITH SR.	Terrence Smith Sr.	426-CHARTER OAK DR. ATLANTA, GA. 30331	5/22/2015
Laure Horsey	Laure Horsey	3016 Sandtown Rd. S.W. Atlanta, GA. 30311	6/10/2015



July 22, 2013

To Whom It May Concern:

This is to confirm that Melissa Clark is receiving mental health services in the Behavioral Health Outpatient Clinic of Grady Health System. She is experiencing significant and incapacitating anxiety and depressive symptoms following the traumatic loss of her son five years ago. Her Major Depressive and Posttraumatic Stress conditions are being treated through our psychosocial rehabilitation, psychiatric medication and outpatient therapy programs.

Sincerely,

Keith Wood, PhD
10 Park Place
Atlanta, GA 30303